



## Kansas Corporation Commission

Bill Graves, Governor   John Wine, Chair   Cynthia L. Claus, Commissioner   Brian J. Moline, Commissioner

March 29, 2000

**RECEIVED**

**MAR 31 2000**

Magalie Roman Salas

Secretary

Federal Communications Commission

455 12<sup>th</sup> Street, SW, TW-A325

Washington, D.C. 20554

**DOCKET FILE COPY ORIGINAL FCC MAIL ROOM**

RE:    In the Matter of MCI Worldcom, Inc.'s Petition for Expedited Declaratory Ruling  
Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the  
Communications Act and Section 51.809 of the Commission's Rules. **CC Docket 00-45**

Dear Ms. Salas:

Enclosed please find the Comments of the State Corporation Commission of the State of  
Kansas responding to the Notice of the Federal Communications Commission in the captioned  
docket.

Sincerely,

Eva Powers  
Assistant General Counsel  
Kansas Corporation Commission

enclosure

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

<b>In the Matter of</b>	)	
	)	
<b>MCI WORLDCOM,&lt; INC.</b>	)	
	)	<b>CC Docket No. 00-45</b>
<b>Petition for Expedited Declaratory Ruling</b>	)	
<b>Regarding the Process for Adoption of Agreements</b>	)	
<b>Pursuant to Section 252(i) of the Communications</b>	)	
<b>Act and Section 51.809 of the Commission's Rules</b>	)	

**COMMENTS OF THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

**Commissioners:**     **John Wine, Chair**  
                              **Cynthia L. Claus**  
                              **Brian J. Moline**

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Act and Section 51.809 of the Commission's Rules )

CC Docket No. 00-45

**COMMENTS OF THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In response to the Notice requesting comments regarding the MCI WorldCom petition, the State Corporation Commission of the State of Kansas (KCC) submits the following comments.

1. In its petition, MCI WorldCom, Inc. (MCI WorldCom) provides what it understands to be the approval procedures of various state commissions, including the KCC, for dealing with adoption of existing interconnection agreements. The KCC takes this opportunity to explain and clarify the procedures it has developed when reviewing a carrier's adoption of a previously approved interconnection agreement.

2. On March 9, 2000, the KCC issued an order identifying the procedures that must be followed when a carrier adopts a previously approved interconnection agreement.<sup>1</sup> The KCC issued the order in the arbitration docket involving Brooks Fiber Communications of Missouri, Inc. (Brooks Fiber), a subsidiary of MCI WorldCom, and Southwestern Bell Telephone Company (SWBT).

3. Brooks Fiber sought a dismissal of the arbitration proceeding after it adopted the SWBT/AT&T agreement. Brooks Fiber took the position that merely filing a Notice of Election

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<sup>1</sup> *Petition of Southwestern Bell Telephone Company for Arbitration of Unresolved Interconnection Issues with Brooks Fiber Communications of Missouri, Inc., pursuant to §252(b) of the Telecommunication Act of 1996.* KCC Docket No. 00-SWBT-250-ARB, Order on Reconsideration (March 9, 2000).

with a copy of the previously approved interconnection agreement was all that was required in order to make the agreement effective. SWBT argued that a signed agreement between the two parties is essential. SWBT stated that the signed instrument need not be the comprehensive interconnection agreement, but must include both parties' signature in order to become an enforceable agreement.

4. The KCC adopted procedures that provide for the expedited approval of adopted interconnection agreements. The procedures require the Incumbent Local Exchange Carrier (ILEC), within two weeks after receiving a Notice of Election, to present the electing carrier a copy of the approved agreement. The KCC allowed the ILEC two weeks in order to allow it some time to determine if it had reason to assert its 51.809(b) or (c) claims. The copy provided to the CLEC for signature must be identical to the original except the name of the carrier and the date of execution must be changed. The executed agreement must then be filed with the KCC within three weeks of the date of the Notice of Election.

5. In order to ensure that the electing carrier is not delayed by the ILEC's failure to timely provide the revised agreement, the procedures allow the electing carrier to begin providing services pursuant to the agreement within three weeks of the date the electing carrier provided its Notice of Election to the ILEC. A signed agreement must nevertheless be filed with the KCC.

6. The KCC believes its procedures will allow an adopted interconnection agreement to become effective expeditiously while enabling the KCC to fulfill its administrative functions. The KCC pointed out that having every agreement on file in the applicable docket will facilitate the KCC's work and better protect the parties if disputes arise, while making it less likely that future disputes will also involve which version of a particular agreement applies.. It will ensure that the KCC can fulfill its administrative obligations by going directly to the docket containing the relevant agreement when disputes arise. To accept MCI's position, as presented in the Brooks case in Kansas, that only a Notice of Election is required and *ipso facto*, the agreement is

effective would require the KCC to identify the appropriate agreement to use in order to resolve disputes. This could be difficult if the underlying agreement has been modified subsequent to the date it was adopted.<sup>2</sup> Requiring that the applicable agreement be filed and signed avoids dispute regarding which version of an interconnection agreement is applicable.

7. In the absence of a signed agreement, or at least some signed documentation as evidence that the parties have in fact agreed to be bound by a certain agreement, the KCC believes that contractual rights may be difficult to enforce. The requirement of a signed document will protect the parties to the agreement.

8. The KCC believes its procedures comply with the Federal Act and FCC Rules. Contrary to the arguments presented in MCI WorldCom's petition, the Federal Act, Rules, and prior FCC orders do not prevent the KCC from adopting procedures for approval of an adopted agreement. The KCC procedures provide for expedited treatment when a competitive local exchange company adopts an agreement that has already been approved while allowing a limited time for the incumbent carrier to assess whether to assert the conditions of Rule 51.809. The time to request reconsideration has passed. Brooks Fiber (MCI) did not request reconsideration of the KCC order establishing the procedures explained above.

9. The KCC disagrees with MCI's claim that there is a need to establish national uniformity for approval of an election to opt into a previously approved interconnection agreement. The Federal Telecommunications Act is clear that interconnection agreements must be approved by state commissions. 47 U.S.C. § 252(e). 47 U.S.C. § 252(i), which allows other telecommunications carriers to opt into approved agreements, does not explicitly require state commission approval of such an election to opt in. It does not make sense that state commissions which are responsible for enforcement of agreements and for resolving disputes

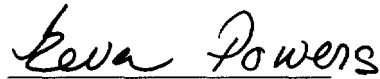
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<sup>2</sup> An example of such confusion occurred in the Brooks Fiber/SWBT arbitration case. Brooks Fiber filed its Notice of Election of the SWBT/AT&T interconnection agreement on December 29, 1999. SWBT and AT&T filed an amendment to their agreement on the same day. Not until March 6, 2000 did Brooks Fiber clarify that it wanted to opt into the pre-amendment agreement

that arise in connection with interconnection agreements should not also have the authority to put in place procedures for approving and administering such elections. The FCC's role with respect to interconnection agreements is limited to acting if state commissions fail to act. 47 U.S.C. § 252(e)(5).

In conclusion the KCC believes its procedures ensure that adopted interconnection agreements are implemented expeditiously while protecting the interest of all of the parties involved.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Glenda Cafer".

Glenda Cafer, General Counsel

Eva Powers

Brett Lawson

1500 SW Arrowhead

Topeka, KS 66604

Counsel for the State Corporation  
Commission of the State of Kansas